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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.) 4:05-CV-00329-TCK-SAJ
)
TYSON FOODS, INC., et al,)
)
Defendants.)

- - - - -
THE VIDEOTAPED DEPOSITION OF
GORDON JOHNSON, PhD, produced as a witness on
behalf of the Defendants in the above styled and
numbered cause, taken on the 4th day of February,
2008, in the City of Tulsa, County of Tulsa, State
of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

Draft Copy

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FOR WILLOW BROOK: Ms. Jennifer Griffin
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I N D E X

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1 (Whereupon, the deposition began at
2 9:04 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of Dr. Gordon Johnson. Today is
5 February 4th, 2008. The time is 9:05 p.m. Would 09:04AM
6 counsel please identify themselves for the Record?

7 MR. NANCE: Bob Nance for the State of
8 Oklahoma being joined shortly by Trevor Hammons also
9 for the State of Oklahoma.

10 MR. BASSETT: Woody Bassett for George's, 09:04AM
11 Inc. and George's Farms, Inc.

12 MR. SANDERS: Bob Sanders for the Cal-Maine
13 defendants.

14 MR. BOND: Michael Bond for the Tyson
15 defendants. 09:04AM

16 MS. SOUTHERLAND: Leslie Southerland for
17 the Cargill defendants.

18 MR. McDANIEL: Scott McDaniel representing
19 Peterson Farms, Inc..

20 MS. GRIFFIN: Jennifer Griffin for Willow 09:05AM
21 Brook Foods on the telephone.

22 VIDEOGRAPHER: Thank you. The witness may
23 be sworn in.

24 GORDON JOHNSON, PhD,
25 having first been duly sworn to testify the truth,

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1 in either Arkansas or Oklahoma?

2 A No.

3 Q Did you determine which of the fields fall
4 below the OSU limb met of 120 STP?

5 A No. 12:04PM

6 Q Let me hand you what I've marked as Exhibit
7 11. Can you identify this, please?

8 A I believe it's a document we just looked at.

9 Q The attachment is?

10 A Yes. 12:05PM

11 Q But that's not the whole document?

12 A The front page is I believe the E-mail that
13 was sent to me with Exhibit 10 as an attachment.

14 Q Who is the sender of this E-mail?

15 A Bert Fisher. 12:05PM

16 Q All right. Is that your E-mail address, sir?

17 A Yes.

18 Q In the to line?

19 A Yes.

20 Q Is the attachment soil test summary 12:06PM

21 10-31-2007, does that appear to be exactly the
22 document as what we marked as Exhibit 10?

23 A Yes.

24 Q All right. Were there ever any draft versions
25 of this soil test summary sent to you by Dr. Fisher?

12:06PM

1 her name is on there, just so everybody is clear. I
2 know that was not part of the original.

3 A Okay. Okay. I've looked at it.

4 Q Okay. Identify it, please, for the Record.

5 A This is an E-mail from Bert Fisher that has a 01:19PM
6 spreadsheet attachment that contains soil test data
7 from Arkansas for Benton and Washington Counties for
8 forage or samples that were identified with forage
9 as the crop, and I believe it includes the years
10 from 2000 through 2007 or through the first six 01:20PM
11 months of 2007.

12 Q This discussion in the first page of the
13 transmittal from Bert Fisher references what appears
14 to be an access database. Am I correct about that?

15 A Yes. 01:20PM

16 Q It says I will be sending along the access
17 data base via mail?

18 A Yes.

19 Q Did you in fact receive an access database
20 from Dr. Fisher? 01:20PM

21 A I expect I did.

22 Q Other counsel in here can correct me if they
23 like but I don't recall being provided an access
24 database in production, so I want to call for
25 production of that database? 01:20PM

1 **A** And to clarify, I may not have received it. I
2 don't know.

3 **Q** But your understanding that there was an
4 access database created?

5 **A** That's what is indicated in the E-mail here. 01:21PM

6 **Q** All right.

7 **A** If I can add, I believe that I received a CD
8 from Dr. Fisher that probably had this information
9 on it.

10 **Q** All right. 01:21PM

11 MR. McDANIEL: Defendants request that the
12 plaintiff produce the CD.

13 MR. NANCE: If we haven't done so already,
14 we will. Just sitting here right now, I don't know
15 whether we have or not. 01:21PM

16 **Q**

17 MR. McDANIEL: Okay.

18 MR. BOND: Want to look?

19 MR. NANCE: No, not today, not right now.
20 It's not on there. 01:21PM

21 MR. McDANIEL: That's what I was going to
22 ask you.

23 **A** It probably isn't because it probably -- I
24 received it in the mail and then I would have -- if
25 I used the data, I would have transferred it to my 01:21PM

1 computer and stored it on a file in my computer and
2 I believe that you have all that data from me, from
3 my computer files. It would be under soil tests
4 Arkansas and it would show all the data for each of
5 these years in separate files.

01:22PM

6 Q But it wouldn't necessarily be the access
7 database itself?

8 A Access database may also be included in there
9 but I wouldn't have looked at that.

10 Q All right. In the third paragraph on the
11 first page of the transmittal, he says here's the
12 summary for Benton and Washington Counties for what
13 I thought could be classified as forage or pasture
14 2000 through 2007. Did I read that collect will I?

01:22PM

15 A Yes.

01:22PM

16 Q So Dr. Fisher was actually exercising some
17 discretion with regard to handling of this data;
18 correct?

19 A Yes. He was reading the crop code
20 information.

01:22PM

21 Q What expertise does Dr. Fisher have in
22 analyzing crop codes as it relates to soil Sam
23 peoples, if you know?

24 A He can read.

25 Q He can read?

01:23PM

1 Q I don't understand that, Dr. Johnson. Mr.

2 Page was provided secretarial services here?

3 A Yeah.

4 Q I note --

5 A Well, I think he was trying to fit the 04:26PM

6 information I sent so we wouldn't -- so that he

7 wouldn't have half of the signature page on one page

8 and half of it on the other. There's, it's a

9 pagination sort of issue.

10 Q Who actually typed your affidavit? 04:26PM

11 A I did.

12 Q And so you sent Mr. Page a Word file by

13 E-mail?

14 A Yes.

15 Q All right. I note, Dr. Johnson, that we 04:26PM

16 received zero outgoing E-mails from you. All the

17 E-mails I received were just like this one right

18 here. They were like E-mails from your inbox. Did

19 you not copy the E-mails from your outbox or did

20 you -- 04:26PM

21 A I thought I copied all of them in and out.

22 Q Well, you can imagine I might have a certain

23 degree of interest of seeing the version of this

24 report you sent to Mr. Page before he revised it and

25 sent it back but for some reason you didn't produce 04:27PM

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1 that.

2 A Well, I may not have kept any earlier
3 versions. I mean I may have saved but there should
4 be a saved copy.

5 Q I would think so, too, because I wouldn't 04:27PM
6 think you would be destroying copies of your report.

7 A I would just be updating them so every time I
8 changed something, I I didn't put a new file number
9 on it.

10 Q Every time you E-mailed it, that version? 04:27PM

11 A Oh, I see, yes.

12 Q Is fixed?

13 A Yes.

14 Q Dr. Johnson, I need to ask you through your
15 counsel to revisit your E-mail and to provide to us 04:27PM
16 any E-mails that have not previously been produced.
17 Now, the E-mails that were produced to us were
18 provided on a disk?

19 A Right.

20 Q Who actually created that disk? 04:27PM

21 A That disk would have been created by someone
22 at Motley Rice.

23 Q Tell me how did they have access to your
24 E-mail files to create a disk.

25 A I sent them a memory stick where I downloaded 04:28PM

1 my E-mails and my reliance and considered
2 information from my computer files.

3 Q Okay. When you downloaded from your computer,
4 are you tech savvy enough to know how to create a
5 PST file in your E-mail system? 04:28PM

6 A I don't know what you're talking about.

7 Q So that?

8 A That answers that question I guess.

9 Q How did you put your E-mail on a memory stick?

10 A I -- there was a way of doing it but I don't 04:28PM
11 know how I did it now but I saved them all I think
12 into a file.

13 Q You're the person at the keyboard doing all
14 this?

15 A Yes, yes. 04:28PM

16 Q Any chance you overlooked saving or excuse me,
17 that you otherlooked exporting some of your E-mail?

18 A I don't think so because I mean I pulled all
19 the E-mails that -- you know, there's a tool for --
20 there's a tool, as I recall, I could use that would 04:29PM

21 search for and collect all the E-mails based on a
22 sender or a recipient and so I put those in those
23 tools I put David Page. I put Bob Nance. I put
24 Bert Fisher. I put whoever I thought I might have
25 an E-mail related to the case in there and then as 04:29PM

1 those -- as the tool identified and gathered those
2 E-mails, I copied them into a file and that file was
3 on a memory stick.

4 Q You would agree it would be kind of strange
5 for us to only have incoming E-mails and none of 04:29PM
6 your outgoing E-mails? Something is awry here.

7 A I mean I don't know. I haven't done this
8 before so I don't know what's strange and what isn't
9 strange.

10 Q I understand, and I am not being accusing. 04:30PM
11 I'm just trying to find the information.

12 A Okay, yes.

13 Q If it wasn't previously produced, we are
14 entitled to it so I need it. I can't let it go.

15 A Okay. 04:30PM

16 Q All right. So, you know, whether it's an
17 issue of maybe you've copied it but it didn't get on
18 the disk that came to us or a maybe you didn't copy
19 it or whatever the case may be, I need to get to the
20 bottom of it and I need those E-mails. 04:30PM

21 A So what are you asking me to do?

22 Q I am asking -- of course, I can't tell you to
23 do anything. These gentlemen, they sign your check
24 of?

25 A I'll wait for them to ask me to do something I 04:30PM

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